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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA, ) No. CR 12-0119-SI  
15 )  
16 v. ) GOVERNMENT OPPOSITION TO  
17 VICTOR FLORES, ) DEFENDANT'S EX PARTE APPLICATION  
18 ) (DOCKET #129)  
19 Defendant. )  
\_\_\_\_\_)

21 | I. Introduction

22 The Government respectfully submits this Opposition to defendant Victor Flores's *ex*  
23 *parte* application for an order requiring the Government to preserve evidence (Docket #129).  
24 For the following reasons, the application should be denied as both premature and moot.

25 || II. Background

26 As set forth in the supporting Declaration of W.S. Wilson Leung, on or about June 7,  
27 2012, counsel for defendant sent an e-mail to the Government reiterating a demand seeking  
28 material relating to an uncharged incident on or about May 3, 2012, when three federal agents

1 who were executing an arrest warrant for Flores at his home were shot and seriously wounded.  
2 The e-mail also requested that law enforcement communications be preserved. In response, the  
3 Government later that day stated: "We have received your request. We will comply with our  
4 discovery obligations under Fed. R. Criminal Procedure 16(a), as well as our additional  
5 obligations under Brady/Giglio." See Leung Dec. Ex. A.

6 On June 8, 2012, counsel sent an e-mail stating that he was going to seek an "*ex parte*"  
7 motion, as soon as practical," requiring preservation of law enforcement communications. In  
8 response, the Government asked, "Why would you be entitled to seek such an order *ex parte*?"  
9 See Leung Dec. Ex. B. Counsel then replied that he was concerned about the destruction of any  
10 of the communications he sought and explained that he was "not asking that the Court order  
11 discovery of this material at this time, but merely an order that assures its preservation." After  
12 receiving this clarification, the Government advised counsel that "there's no need to file a  
13 motion: we do not intend to dest[roy] any such communications that exist." See Leung Dec. Ex.  
14 C.

15 **III. Discussion**

16 The defendant's *ex parte* application should be denied. First, it is premature. Defense  
17 counsel has no basis — aside from speculation — for his concern that the Government is  
18 planning to destroy any of the internal communications he seeks.

19 In addition, the defendant's application is also moot. As the Government advised  
20 counsel, the Government has no intention of destroying any of the communications relating to  
21 the uncharged conduct that the defendant seeks.

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